



Entered on Docket
February 09, 2007

Hon. Linda B. Riegle
United States Bankruptcy Judge

Annette W. Jarvis, Utah Bar No. 1649
Steven C. Strong, Utah Bar No. 6340
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: ajarvis@rqn.com

Lenard E. Schwartzer, NV Bar No. 0399
Jeanette E. McPherson, NV Bar No. 5423
SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Telephone: (702) 228-7590
Facsimile: (702) 892-0122
E-Mail: bkfilings@s-mlaw.com

Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case Nos. BK-S-06-10725 LBR
Case Nos. BK-S-06-10726 LBR
Case Nos. BK-S-06-10727 LBR
Case Nos. BK-S-06-10728 LBR
Case Nos. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

**STIPULATION AND ORDER
AUTHORIZING DEBTOR USA
COMMERCIAL MORTGAGE
COMPANY AS LOAN SERVICER
TO ISSUE PARTIAL RELEASES
FOR THE RIO RANCHO LOAN
AFTER A MATURITY DEFAULT
[AFFECTS DEBTOR USA
COMMERCIAL MORTGAGE]**

In re:
USA SECURITIES, LLC,
Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

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Las Vegas, Nevada 89146-5308
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Debtor in Possession USA Commercial Mortgage Company ("USACM"), by and through its counsel Lenard Schwartz of Schwarter & McPherson Law Firm, the Official Committee of Holders of Executory Contract Rights Through USA Commercial Mortgage Company (the "Direct Lenders Committee"), by and through its counsel Gregory E. Garman of Gordon & Silver, Ltd., the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF Committee"), by and through its counsel Eve Karasik of Stutman, Treister & Glatt, P.C. and Candace C. Carlyon of Shea & Carlyon, Ltd., the Official Committee of Unsecured Creditors of USA Commercial Mortgage Company (the "UCC Committee"), by and through its counsel Susan Freeman and Rob Charles of Lewis & Roca, LLC, the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "DTDF Committee"), by and through its counsel, Marc A. Levinson of Orrick, Herrington & Sutcliffe LLP and Anne M. Loraditch of Beckley Singleton, Chtd., and Compass Partners, LLC ("Compass"), by and through its counsel, George Davis of Weil Gotshal & Manges LLP, and Fertitta Enterprises ("Fertitta"), by and through its counsel, Janet L. Chubb of Jones Vargas, hereby stipulate and agree as follows:

WHEREAS, on October 4, 2006, USACM filed its "Motion To Authorize Debtor USA Commercial Mortgage Company as Loan Servicer to Approve Loan Modification for Palm Harbor One Loan, to Provide the Previously Authorized Subordination of the Marlton Square 2nd Loan in Connection with the Payoff of the Marlton Square 1st Loan, to Authorize a Short-Term Forbearance for the Marlton Square 1st Loan, and to Generally Authorize Short-Term Loan Forbearances and Full Releases and Reconveyances for Loans Paid Off in Full" (the "Motion"), as Docket No. 1434.

WHEREAS, at the hearing held on October 30, 2006, appearances were made upon the record, testimony and other evidence were presented and arguments were made on the Motion.

WHEREAS, at the hearing, USACM, the Direct Lenders Committee, the UCC Committee, and the FTDF Committee agreed that USACM should be authorized to take such actions as are authorized by, and in accordance with, the existing Loan Servicing Agreements, and such actions were to include, but were not limited to, granting short-term forbearances of up to

ninety (90) days as is consistent with the terms of the Loan Servicing Agreements, which authority was granted to USACM in the Court's November 15, 2006 Order entitled "Order Granting Motion to Authorize Debtor USA Commercial Mortgage Company as Loan Servicer to Approve Loan Modification for Palm Harbor One Loan and to Provide the Previously Authorized Subordination of the Marlton Square 2nd Loan," Docket No. 1794 (the "November 15, 2006 Order").

WHEREAS, Compass Partners, LLC ("Compass") is the Court approved purchaser of certain assets of USACM and Debtor USA Capital First Trust Deed Fund, LLC ("FTDF"), which includes the 3.11% undivided interest of FTDF (\$70,000 principal amount) in the Loan (the "Rio Rancho Loan") serviced by USACM that was made to Borrower Rio Rancho Executive Plaza, LLC (the "Rio Rancho Borrower").

WHEREAS, Fertitta and other participating Direct Lenders provided an additional advance on the Rio Rancho Loan in the amount of \$3,773,000 pursuant to the "Order Granting Debtors' Amended Motion for Authority, Subject to Advance Approval by Nevada Mortgage Lending Division, for Fertitta Enterprises or its Affiliate to Provide an Additional Advance for the Rio Rancho Executive Plaza Loan Serviced by Debtor USA Commercial Mortgage Company" entered on August 8, 2006, by the Court (the "August 8, 2006 Order").

WHEREAS, the Compass Asset Purchase Agreement dated December 8, 2006 ("APA"), which was filed with this Court on December 18, 2006 as Docket No. 2164, authorizes USACM to provide partial releases on loans serviced by USACM, but only pursuant to the terms of Court orders entered prior to the December 8, 2006 date of the APA.

WHEREAS, the Court orders entered in these cases prior to December 8, 2006, do not expressly provide authorization for USACM to grant partial releases after the maturity date of a loan serviced by USACM, and it is unclear if the general provisions of the August 8, 2006 Order or the November 15, 2006 Order provide such authorization to USACM.

WHEREAS, the Rio Rancho Loan matured on January 20, 2007, and the Rio Rancho Borrower has requested that USACM immediately issue certain partial releases for portions of the Rio Rancho Project that are being sold, the sale of such property being scheduled to close immediately.

1 **WHEREAS**, Compass is in agreement that USACM be authorized to immediately issue
 2 partial releases on the Rio Rancho Loan at this time, notwithstanding any other provision of the
 3 APA to the contrary, and further agrees that issuance of such partial releases will not constitute a
 4 breach by USACM or FTDF under the APA.

5 **WHEREAS**, Fertitta, the Direct Lenders Committee, the UCC Committee, the FTDF
 6 Committee, and the DTDF Committee also agree that USACM should be authorized to
 7 immediately grant the requested partial releases on the Rio Rancho Loan, even though the Rio
 8 Rancho Loan has matured, so long as the partial releases are consistent with the partial release
 9 provisions of the Rio Rancho Loan documents and so long as the regular interest payments on the
 10 Rio Rancho Loan are current as of the time the partial releases are granted (even after the maturity
 11 date), with USACM (or, as applicable, Compass) reserving the right to collect default interest on
 12 the Rio Rancho Loan; provided, that any grants of partial releases shall not constitute an extension
 13 of the maturity date of the Rio Rancho Loan or a waiver of any default under the Rio Rancho
 14 Loan; and provided further, that USACM shall provide to the UCC Committee a copy of the
 15 payoff statement for each such partial release at the time that the payoff statement is being sent to
 16 the Rio Rancho Borrower.

17 **WHEREAS**, because of the immediate deadline for the closing of portions of the Rio
 18 Rancho Project, USACM, Fertitta, the Direct Lenders Committee, the UCC Committee, the FTDF
 19 Committee, the DTDF Committee, and Compass agree that the automatic 10 day stay under
 20 Bankruptcy Rule 6004(g) should not apply, and this Order should be effective immediately upon
 21 its entry.

22 **NOW THEREFORE**, in consideration of the foregoing, USACM, Fertitta, the Direct
 23 Lenders Committee, the UCC Committee, the DTDF Committee, the FTDF Committee, and
 24 Compass agree as follows:

- 25 1. The foregoing recitals are incorporated herein in full.
- 26 2. USACM is authorized to grant partial releases for the Rio Rancho Loan serviced by
- 27 USACM, even though the Rio Rancho Loan has matured, so long as the partial releases are
- 28 consistent with the partial release provisions of the Rio Rancho Loan documents and so long as

the regular interest payments on the Rio Rancho Loan are current as of the time the partial releases are granted (even after the maturity date), with USACM (or, as applicable, Compass) reserving the right to collect default interest on the Rio Rancho Loan; provided, that any such grants of partial releases shall not constitute an extension of the maturity date of the Rio Rancho Loan or a waiver of any Rio Rancho Loan default; and provided further, that USACM shall provide to the UCC Committee a copy of the payoff statement for each such partial release at the time that the payoff statement is being sent to the Borrower.

3. The automatic 10 day stay under Fed. R. Bankr. P. 6004(g) shall not apply to this Order, and this Order shall be effective immediately upon entry of this Order.

RAY QUINNEY & NEBEKER P.C. and
SCHWARTZER & MCPHERSON LAW FIRM

STUTMAN, TRIESTER & GLATT, P.C.
and SHEA & CARLYON, LTD.

/s/ Jeanette E. McPherson

Annette W. Jarvis, Utah Bar No. 1649
Steven C. Strong, Utah Bar No. 6340
Lenard E. Schwartzer, NV Bar No. 0399
Jeanette E. McPherson, Esq., NV Bar No. 5423
Attorneys for Debtors

/s/ Candace C. Carlyon

Frank A. Merola, Esq.
Eve H. Karasik, Esq.
Christine Pajak, Esq.
Candace C. Carlyon, Esq.
*Counsel for the Official Committee of Equity
Security Holders of USA Capital First Trust
Deed Fund, LLC*

LEWIS AND ROCA LLP

WEIL, GOTSHAL & MANGES LLP

/s/ Rob Charles

Susan M. Freeman, Esq.
Rob Charles, Esq.
Phoenix, Arizona 85004-4429
*Counsel for the Official Committee of
Unsecured Creditors*

/s/ Tyson M. Lomazow

George A. Davis, Esq.
Tyson M. Lomazow, Esq.
Counsel for Compass Partners, LLC

GORDON & SILVER, LTD.

ORRICK, HERRINGTON & SUTCLIFFE LLP
and BECKLEY SINGLETON, CHTD.

/s/ Gregory E. Garman

Gerald M. Gordon, Esq.
Gregory E. Garman, Esq.
Brigid M. Higgins, Esq.
*Counsel for the Official Committee of Holders
of Executory Contract Rights through USA
Commercial Mortgage Company*

/s/ Anne M. Loraditch

Marc A. Levinson, Esq.
Jeffrey Herman, Esq.
Anne M. Loraditch, Esq.
*Counsel for the Official Committee of Equity
Security Holders of USA Capital Diversified
Trust Deed Fund, LLC*

**STIPULATION AND ORDER AUTHORIZING DEBTOR USA COMMERCIAL MORTGAGE
COMPANY AS LOAN SERVICER TO ISSUE PARTIAL RELEASES FOR THE RIO RANCHO
LOAN AFTER A MATURITY DEFAULT [AFFECTS DEBTOR USA COMMERCIAL
MORTGAGE]**

JONES VARGAS

OFFICE OF THE U.S TRUSTEE

/s/ Janet L. Chubb

/s/ August B. Landis

Janet L. Chubb, Esq.
Counsel for Fertitta Enterprises

AUGUST B. LANDIS, ESQ

ORDER

IT IS SO ORDERED.

Submitted By:

/s/ Jeanette E. McPherson

Annette W. Jarvis, Utah Bar No. 1649
Steven C. Strong, Utah Bar No. 6340
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
and
Lenard E. Schwartz, Nevada Bar No. 0399
Jeanette E. McPherson, Esq., Nevada Bar No. 5423
SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas NV 89146
Attorneys for Debtors

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